## REMARKS / ARGUMENTS

### I. General Remarks and Disposition of the Claims

Please consider the application in view of the following remarks. Applicants thank the Examiner for his careful consideration of this application.

At the time of the Office Action, claims 1-38 were pending in this application. Claims 7 and 11-38 were withdrawn from consideration. Claims 1-6 and 8-10 were rejected in the Office Action. By this paper, claims 1, 11, 19, and 36 have been amended. These amendments are supported by the specification as filed. All the amendments are made in a good faith effort to advance the prosecution on the merits of this case. It should not be assumed that the amendments made herein were made for reasons related to patentability. Applicants respectfully request that the above amendments be entered and further request reconsideration in light of the amendments and remarks contained herein.

### II. Remarks Regarding Rejections Under 35 U.S.C. § 112

Claims 1-6 and 8-10 stand rejected under 35 U.S.C. § 112, second paragraph. With respect to these rejections, the Office Action states:

> Claims 1-6 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claim 1 recites the limitation "during the drilling phase" in the preamble and in line 7. There is insufficient antecedent basis for this limitation in the claim. Moreover, it is unclear from the claim language as to what type of process "the drilling phase" is referring to: an oil field drilling using a drilling bit, completion, cementing, fracturing, etc.

(Office Action at 3.) In light of the Examiner's remarks, Applicants have amended independent claims 1, 11, 19, and 36 and respectfully request the withdrawal of these rejections. Furthermore, regarding the claim language "the drilling phase," Applicants kindly refer the Examiner to paragraph [0013] of the instant application for clarification of what the term "the drilling phase" encompasses.

### III. Remarks Regarding Rejection Under 35 U.S.C. § 102

Claims 1-6 and 8-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2003/0013871 to Mallon *et al.* (hereinafter "*Mallon*"). With respect to this rejection, the Office Action states:

Mallon discloses preparing a modified cellulose/polysaccharide ether by subjecting the cellulose ether sodium salt to electrodialysis and reacting with a base or salt to form a product that has few impurities and is thereby low polluting; wherein the base or salt can be, e.g., a chloride of up to th[r]ee carbons; and wherein the polysaccharide starting material can be chitosan or chitin. (Page 1, [0004] to [0008] and [0018]; page 2, [0024]; page 4, [0060]) The molecular weight of the [] polysaccharide is between 10,000 and 2 million grams/mol (page 4, [0061]) and a particular derivatizing agent for modifying the polysaccharide are alkyl halides, such as ethyl chloride or methyl chloride (page 4, [0062]).

Mallon further disclose that a typical industrial application for the polysaccharide ether is in oil field drilling and fracturing processes, wherein the modified polysaccharide can serve as a viscosity adjuster or suspension aid (page 6, [0076]) and wherein said polysaccharide can be present in a composition from about 0.05 to 3% by weight (page 6, [0080]). Accordingly, because Mallon is disclosing adding to a drilling process in a subterranean formation the same compound (alkylated chitosan) as the elected species for the hydrophobically-modified polymer recited in the claims (which would, of course, inherently have the same physical properties) Mallon is thereby disclosing a method of drilling in a subterranean formation by adding an RPM polymer compound in accordance with the instant claims with sufficient specificity.

Although Mallon may not explicitly disclose "allowing" the relative permeability modifier to "attach" onto the surface, because Mallon discloses treating a formation with the same relative permeability modifier (RPM) polymer compound as encompassed by the instant claims (which would possess the same physical properties/effects), then the method of drilling disclosed in Mallon must inherently "allow" the RPM polymer compound to "attach" to a portion of the surface of the subterranean formation" upon the addition of said RPM polymer compound in Mallon's method of drilling in a formation.

Thus, the instant claims are anticipated by Mallon.

(Office Action at 4-5.) Applicants respectfully disagree. Applicants respectfully submit that the cited reference does not disclose each and every limitation of claims 1-6 and 8-10 as required to anticipate these claims under 35 U.S.C. § 102(b). *See* MPEP § 2131.

In particular, with respect to independent claim 1, *Mallon* fails to disclose "a water-soluble relative permeability modifier that comprises ***a hydrophobically modified polymer***." Although *Mallon* may disclose reacting chitosan with a salt having up to three

carbons, *Mallon* fails to disclose a "hydrophobically modified" polymer as defined by Applicants. Applicants have defined "hydrophobically modified" to refer to the incorporation into the hydrophilic polymer structure of hydrophobic groups, wherein the alkyl chain length is from about 4 to about 22 carbons. (*See* Specification, ¶ [0018].) As the alleged hydrophobic compounds of *Mallon* comprise up to three carbons, their incorporation into a hydrophilic polymer would not constitute hydrophobic modification. *See Mallon*, ¶ [0018] ("In addition, 'base' and 'salt,' as used herein, refer to the hydroxides, chlorides, carbonates or lower carboxylates having up to 3 carbons."). Therefore, Applicants respectfully submit that *Mallon* fails to disclose a water-soluble relative permeability modifier that comprises a hydrophobically modified polymer. As such, the cited reference does not anticipate this claim.

Therefore, Applicants respectfully assert that independent claim 1 and its dependent claims are not anticipated by *Mallon*. Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 1-6 and 8-10.

**IV. No Waiver**

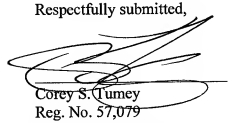
All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art.

## SUMMARY

In light of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that no fees are due in association with the filing of this response. Should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefor, and direct that any additional fees be charged to Baker Botts, L.L.P.'s Deposit Account No. 02-0383, Order Number 063718.0411.

Respectfully submitted,



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